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Attorneys for Plaintiff Brassica Protection Products LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRASSICA PROTECTION PRODUCTS, LLC

Plaintiff,

07 Civ. 7844 (SAS)

-against-

CAUDILL SEED & WAREHOUSE CO., INC. d/b/a
CAUDILL SEED CO.,

Defendant.

**AFFIDAVIT OF EDWARD L.
POWERS IN OPPOSITION TO
MOTION TO TRANSFER,
STAY, OR DISMISS**

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

EDWARD L. POWERS, being duly sworn, deposes and says:

1. I am a member of Bingham McCutchen LLP and am admitted to the bar of this Court. I submit this affidavit on behalf of plaintiff Brassica Protection Products LLC (“Brassica”) in opposition to the motion of defendant Caudill Seed (“Caudill”) to transfer, stay or dismiss this action.

2. A copy of the parties' December 2004 sublicense agreement (the "Agreement") is annexed to the accompanying declaration of Brassica's Antony Talalay, executed on November 27, 2007 ("Talalay Decl.") as Exhibit 1. Mr. Talalay's declaration also attaches copies of the parties' August 22, 2006 memorandum confirming understandings then reached by

the parties at my firm's New York office (Ex. 2), and a letter from Caudill to Brassica sent by facsimile at 4:57 p.m. on July 20, 2007 (Ex. 3).

3. Brassica first brought suit against Caudill in the New York State Supreme Court, New York County, on August 6, 2007, and served Caudill at its office in Kentucky the next day. Annexed as Exhibit 4 is a true and correct copy of a portion of the state court complaint, without exhibits, comprising factual allegations and the causes of action.

4. On September 5, 2007, Brassica commenced the instant action for infringement of the patents and breaches of the Agreement. A true and correct copy of Brassica's complaint, without exhibits, is annexed hereto as Exhibit 5. Brassica served Caudill at its office on September 6, 2007. Caudill removed Brassica's state court action on September 5, 2007 and Brassica dismissed the action on September 7, 2007.

5. On September 4, 2007, Caudill filed an action for a declaratory judgment of non-infringement in the United States District Court for the Western District of Kentucky. A true and correct copy of Caudill's complaint, without exhibits, is annexed hereto as Exhibit 6. Caudill delivered its summons and complaint to the Kentucky Secretary of State on September 20, 2007, and service upon Brassica took place on September 26, 2007. A true and correct copy of the proof of service filed by Caudill in the Kentucky action is annexed hereto as Exhibit 7.

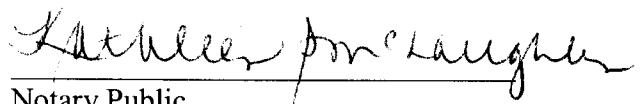
6. By stipulation, the parties agreed to equal extensions of the deadlines for each to answer, move or otherwise respond to the other's complaint. In the last of these respective stipulations, Caudill's deadline was extended to November 16, 2007 (which, in accordance with the Court's motion schedule, became November 20, 2007), and Brassica's deadline was extended to December 6, 2007.

7. A true and correct copy of the Scheduling Order signed by the Court on November 13, 2007, is annexed hereto as Exhibit 8.

Dated: November 27, 2007


Edward L. Powers

Subscribed and sworn to before me
this 21st day of November, 2007.


Notary Public

KATHLEEN S. MC LAUGHLIN
Notary Public, State of New York
No. 01MC6167323
Qualified in Nassau County
Commission Expires 5/29/2011